Midwest Alloys, Inc. *and* **John Coats.** Case 14-CA-15027

May 24, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On January 12, 1982, Administrative Law Judge Nancy M. Sherman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt her recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Midwest Alloys, Inc., D'Fallon, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

DECISION

STATEMENT OF THE CASE

NANCY M. SHERMAN, Administrative Law Judge: This case was heard before me in St. Louis, Missouri, on September 8, 1981, pursuant to a charge filed on May 28, 1981; and a complaint issued on July 14, 1981, and amended on August 27, 1981. The issue presented is whether Respondent Midwest Alloys, Inc., violated Section 8(a)(1) of the National Labor Relations Act, as amended, (the Act) by threatening to effect reprisals against employees because they filed grievances and by soliciting the assistance of International Molders and Allied Workers Union, Local No. 59, AFL-CIO-CLC (the Union), which was admittedly the employees' statutory bargaining representative, to discourage an employee from filing grievances.

On the basis of the entire record, including the demeanor of the witnesses, and after due consideration of the briefs filed by Respondent and by counsel for the General Counsel (the General Counsel), I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Missouri corporation with its principal office and place of business in O'Fallon, Missouri, where Respondent is engaged in the manufacture, nonretail sale, and distribution of stainless steel and related products. During the year ending June 1, 1981, a representative period, Respondent shipped products valued in excess of $50,000 directly to points located outside Missouri. I find that, as Respondent concedes, Respondent is engaged in commerce within the meaning of the Act, and that assertion of jurisdiction over its operations will effectuate the policies of the Act.

The Union is a labor organization within the meaning of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

James I. Reid (herein called Reid Sr.) has been Respondent's president for 30 years. Throughout that period, Respondent has been a party to a series of contracts executed by the Union's parent International and the Manufacturers' Industrial Relations Association (MIRA), and a series of supplemental agreements between the Union and Respondent individually. Respondent called as a witness Leo Novak, who at the time of the September 1981 hearing had been staff representative for the Union's parent international since at least December 1979 and had previously been the Union's financial secretary. As an active employee of Respondent, Novak had been active in collective bargaining since about 1954, and had been chairman of the shop committee for 16 years. Novak had negotiated with Reid Sr. until about 1977. Novak credibly testified to the belief that Reid Sr. had always been a man of his word, and that although the Union and Respondent had "hard-headed discussions" and "bumped heads quite a bit," they always came to an agreement.

Since about 1975, James S. Reid (Reid Jr.) who is the son of James I. Reid and is Respondent's secretary-treasurer, has been Respondent's chief labor relations officer. In early 1980, the union president/shop steward, Willie Hoskins, appointed employee Janet M. Jolly to serve as machine shop committeeperson because Reid Jr. had insisted that this job be filled in order to enable Respondent to comply with contractual requirements for the presence of a committeeperson during certain portions of the grievance procedure.[1] Respondent's brief states, and there is no evidence or claim to the contrary, the charge

[1] Reid Jr. testified without objection that Hoskins had told him nobody wanted the job.

which gave rise to the instant case is the first and only charge ever filed against Respondent.

B. *John Coats' 1980 Grievance Activity*

Respondent's machine shop includes persons classified as machinists and persons classified as lathe operators. The collective-bargaining agreement states that machinists have a labor grade of 18 and that lathe operators have a labor grade of 7; and specifies a significantly higher wage scale for machinists than for lathe operators.[2] However, machinists spend a lot of their time doing lathe operator work. Moreover, since about 1966, Respondent and the Union have been confronted with problems involving allegations that employees classified and paid as lathe operators were performing machinists' work. The issue was the subject of a national arbitration proceeding and, a number of years before the September 1981 hearing before me, a lawsuit. Respondent prevailed in both proceedings.

At all material times when working in the machine shop, John Coats has been classified by Respondent as a lathe operator. On April 14, 1980, Coats filed a request for a "Job Description and Classification change," in which he requested that his job be evaluated as labor grade 18, the same labor grade as machinists. When considered in light of the job descriptions for these two jobs, his request alleged that his job was like the machinist classification with respect to preemployment training, employment training and experience, mental skill, and responsibility for safety of others. His request made like allegations with respect to responsibility for tools and equipment and with respect to manual skill; responsibility for material, tools, and equipment; and mental effort. In connection with the categories referred to in this last sentence, his request alleged, *inter alia*, that his job required him to set up machinery; to use calipers, micrometers, and other precise measuring instruments; to sharpen tools; and to observe and check close tolerances.[3] In addition, his request alleged that his job required some heavy lifting; both the machinist's and the lathe operator's job descriptions specify light lifting only. This request was signed by Reid Jr. inferentially to acknowledge that he had seen it, as well as by Coats and machine shop committeeperson Jolly. The collective-bargaining agreement calls for referral of such requests directly to the International and to MIRA. I infer that Coats' request was so referred. About mid-June 1980, union steward Hoskins advised Coats that it had been denied; according to Novak because (in effect) there was no change in the job operation. Reid Sr. testified that the machinist's and lathe operator's job descriptions and evaluations had been prepared by representatives from the Union and MIRA many years earlier after studying the jobs in Respondent's shop, that such representatives would not draw up another job evaluation unless Respondent put in a new piece of equipment or changed its method of doing something, and that most employer members of MIRA do not have lathe operators or machinists.

On May 1, 1980, while Coats' request for a job description and classification change was still pending, he filed a grievance alleging that he was doing the same work as the machinists in his department ("setting up machines, sharpening tools, checking and holding close tolerances, using micrometers and various measuring devices, and etc.") but was receiving only lathe operator's pay. The grievance, which indicates on its face that it was initially received by admitted supervisor Anthony Crnko, requested that Coats receive machinists' pay. This grievance was denied on June 17, 1980. The "Disposition" entry bearing that date bears at least the purported signatures of Reid Jr., Hoskins, and Novak.

C. *Coats' 1981 Grievance Activity and Management's Remarks Pertaining Thereto*

1. 1981 discussion between Respondent and the Union regarding machine-shop classifications

In 1965, Respondent's machine shop employed a total of about 15 machinists and lathe operators, more than half of whom were machinists. By about August 1979, there were about nine machinists and lathe operators, including lathe operator John Coats (hired about March 1979). Coats testified that on an unspecified date he took over the job of a machinist who had quit; the record indicates that he was referring to Kenneth Vessels, who quit about September 1980. About January 1981, machine shop sales began to decline. By mid-April 1981,[4] Respondent's machine shop employed two lathe operators (machine shop committeeperson Jolly, hired about September 1979, and Coats) and four machinists.[5]

In a meeting with Hoskins and Jolly on April 13, 1981, Reid Jr. asserted that there was only lathe operator work, and not machinist work, in the machine shop. Reid Jr. proposed that the individual employees who at that time were classified as machinists and paid the machinists' rate be "red-circled" (that is, paid at the machinists' rate so long as they remained in Respondent's employ), but that nobody else be hired as a machinists, be promoted to that classification, or be paid the machinists' rate; and that lathe operators be given a higher labor grade. Jolly rejected this proposal. Jolly asked Reid Jr. to reclassify Coats as a machinist because he had allegedly taken over a machinist job. Reid Jr. said that although Jolly's job was not in jeopardy, Respondent was losing too much money on the machine shop, and that actually the machine shop should be shut down. Reid Jr. gave the union representatives the opportunity to inspect Respondent's books to determine whether his claim of machine-shop losses was true. Jolly did not inspect the books; the record fails to show whether any other union representative did so.

[2] In 1981, machinists were to be paid about $7.31 an hour, and lathe operators were to be paid $6.265.

[3] At the September 1981 hearing before me, he testified that he was in fact performing such functions. The job description for lathe operator does not refer thereto.

[4] All dates hereafter are 1981 unless otherwise stated.

[5] A third employee, Henry Russell, was classified as a lathe operator until about April 1981, when he was transferred to miscellaneous work.

2. The April 1981 grievance form filled out by Coats regarding his job classification

The collective-bargaining agreement provides that an employee with a complaint must initially discuss and try to settle it with his immediate supervisor, in the presence of the shop committeeman if the employee so desires. Still according to the language of the agreement, if the dispute remains unresolved, the employee must (within 3 days of the discussion) "fully set forth his grievance" in quadruplicate on forms provided for this purpose, give two copies to the Union, and give two copies to "his immediate supervisor or company representative." Steward Hoskins testified, in effect, that it was proper for an employee to give filled-in grievance forms directly to his committeeperson and to Respondent without consulting with or processing them through Hoskins. However, the Union has established a practice of having an employee who is dissatisfied with his supervisor's disposition of the employee's complaint submit that complaint (frequently, if indeed not usually, through his committeeperson) to Hoskins, who decides what is to be done about it. If he decides to drop it, it goes no further.[6] If he decides to pursue it, he discusses it informally with Respondent and frequently settles it at that point. Ordinarily, no written grievance forms are given to Respondent until after such an oral discussion between Hoskins and Respondent has failed to result in a settlement. The Union has informed Respondent that grievances would be coming through Hoskins. Reid Jr. stated on the record, partly as a witness and partly in his capacity as Respondent's representative at the hearing, that the foremen have been instructed to sign any grievance form presented to them; but that because of a "directive" given Respondent by the Union, Respondent does not process any document as a grievance unless it was presented through a union steward. However, Hoskins credibly testified that on a number of occasions, a request that Hoskins discuss "grievances" before going to "arbitration" (meaning, before proceeding beyond the employee's efforts to settle a complaint with his immediate supervisor) has proceeded from Respondent. At the September 1981 hearing before me, Hoskins credibly testified that the only "grievances" received by Respondent in the preceding year had been filed by Coats, and all other "disputes" had been settled at the "shop level." Hoskins also credibly testified that he knew of no grievances which had been filed during the preceding year in a shop which occupies the same building as the machine shop and is affiliated with Respondent.

Committeeperson Jolly related to Coats the discussion between Jolly, Hoskins, and Reid Jr. on April 13, 1981, regarding the classification and pay of lathe operators and machinists. On the following day, April 14, Coats filled in a "grievance report" form, which was signed by him and by Jolly. Coats gave at least one copy, and probably all four copies, to Foreman Crnko, who signed it. The document alleged:

> I have five years machine shop experience including an 18 month training program and for 1-1/2 years have been doing the same work (as ordered by supervisor) and at least the same quality work and at least as much work as the machinists in our department . . . for lathe operators pay (see job classification sheet for machinists and lathe operators). This is in direct violation of a written and signed agreement. I will waive back pay if the above problem is adjusted soon.
>
> P.S. Assumed all of Kenneth Vessel's (Machinist) jobs when he quit.

On a date not shown in the record, the following entry was made on at least one copy of the document, over Hoskins' at least purported signature and in the blank calling for "Disposition by Foreman, Plant Superintendent, Shop Committee and District Representative." "Grievance Denied. Reason. Based on Grievance Denied Before." The statements and testimony of Reid Jr. indicate that Respondent chose to regard this document as a procedural nullity because it was never submitted to Respondent through Hoskins.

3. Coats' May 1981 grievances

On May 5, 1981, Coats filled out a grievance form alleging that during the week ending May 2, 1981, he had performed certain suction head work with a .003 tolerance, that such work was within the machinist's job classification, and that he had set up the job, and that he should be drawing machinist's pay. Hoskins' at least purported signature appears in the space calling for the signature of "Committee." Crnko's at least purported signature appears on this document after the printed entry "Date Received by." On May 20, 1981, Coats filled out a grievance form complaining of a May 18 written warning which he had received, allegedly for talking to another employee. This form alleged that the real reason for the warning was Coats' prior grievance activity, but the complaint does not so allege. Coats gave all four copies to Foreman Crnko, who told him to fetch committeeperson Jolly. Coats did so, and then returned to his job.

4. Allegedly unlawful statements by Crnko

Across the street from the machine shop is the foundry, where the work is hot, dusty, and more dangerous than in the machine shop. Jolly testified to the following effect: Crnko said that he did not feel she should sign the grievance, that it was "ridiculous." She said that by signing it she had shown that she had read it, and that Coats had felt he had received a warning because of grievances he had filed. Crnko said that if Coats continued to file the grievances, he was going to end up with his "buddies" across the street. Crnko asked her to fetch Coats.

Jolly's signature appears on the May 20 grievance, and Coats corroborated her testimony that, after he left her in Crnko's office, Coats was called back in to discuss the grievance. For the reasons stated *infra*, I credit her testimony regarding her private conversation with Crnko.

[6] Jolly, a committeeperson for at least 18 months, testified that Hoskins could deny grievances, although she could not.

As to these two employees' conversation with Crnko, Coats and Jolly testified that Crnko said that he wanted the grievances to stop, Coats asked how Crnko could stop them, and Crnko said, "we would shut her down," meaning the machine shop. For reasons stated *infra*, I credit the employees' testimony in this respect.

5. Allegedly unlawful statements by President Reid Sr.

The evidence fails to show how Coats' May 20 grievance was disposed of. Reid Jr. stated at the hearing, in his capacity as Respondent's representative, that it was "denied in a meeting."

On June 2, a conference with respect to Coats' May 5 grievance (and, perhaps, his May 20 grievance) was attended by Coats, the Reids, Hoskins, Jolly, Novak, and a committeeman whose name does not appear in the record. During this meeting, Respondent stated on a couple of occasions that the machine shop was not making any money, and implied that it was "expendable." Respondent proposed that it pay lathe operators the machinists' rate when they were doing machinists' work and pay machinists the lathe operators' rate when they were doing lathe operators' work. Jolly and Coats rejected this proposal. Reid Sr. credibly testified without contradiction that during this meeting there was a dispute between Coats on the one hand, and Novak and the Reids on the other, about the meaning of a contract clause, with Coats stating that Novak and the Reids did not know what they were talking about. There is no direct evidence as to which clause this was, but I infer that it was the provision, "An employee temporarily transferred to a higher labor grade during the course of a normal day shall be paid at the higher labor grade for the entire day provided he spends at least 2 hours working in the higher labor grade. An employee temporarily transferred to a lower labor grade during the course of a normal day shall not have his rate reduced. Employees who are regularly employed at two (2) or more labor grades during their workday shall be paid at the rate actually spent in each labor grade or shall be paid a composite rate."[7] During this meeting, Respondent stated that there was no machinist work in the shop, only lathe operator work, because Respondent's machines were too old to hold the tolerances for machinist work. Jolly and Coats denied this assertion, and Coats referred to the .003 tolerance on the suction heads mentioned in the May 5 grievance. The Reids laughed at this, and Reid Jr. said there was nothing to that job. When Jolly disputed this, Reid Sr. said that if she felt that strongly about the machinists, doing machinist work, Respondent would give to one of its own machinists the next job it would normally have contracted out, and would fire him if he ruined it. Jolly said that she did not want to jeopardize anyone's job. Coats said that he could not be fired for unintentionally ruining something. Reid Sr. said that Coats could be fired if he ruined a $1,000 casting.

At this point, the meeting broke into groups. Novak proposed to Reid Jr. that all the employees in the machine shop be classified as machinists. Reid Jr. rejected this proposal. Jolly proposed that the lathe operators all be classified as apprentice machinists; this meant that they would initially be paid at labor grade 12 (as compared to their existing, lower-paid labor grade of 7) and be increased to labor grade 18, the machinists' labor grade, in 3 years.[8] Reid Jr. rejected this proposal also. Novak asked Respondent to define the difference between lathe operator work and machinist work. Inferentially, Respondent said that it would. Jolly asked whether the grievance would be considered as still pending if Respondent gave the Union an unsatisfactory definition of the difference between the two jobs. Reid Jr. said that if nobody was then signing it at that particular time, the grievance would still be open.

Meanwhile, Coats and Reid Jr. had continued their argument, during which both became angry, about what the contract meant. As the entire meeting was breaking up, Reid Sr. called Jolly back. According to her testimony, he said that before a grievance was filed with Respondent it should be presented to steward Hoskins; and further asked her to discuss Coats' "attitude with him because he was making it hard on himself." Novak testified for Respondent that Reid Sr. asked Jolly to talk to Coats about his "attitude," and said that Coats "was a good worker. The Company wanted to keep him, but his attitude—they were a little leery about his getting into trouble. He was fighting the Company constantly." Hoskins testified for Respondent that Reid Sr. told Jolly that "she should talk to [Coats] about his attitude, that [Reid Sr.] was afraid that as hostile as [Coats] was, that he might go and do something irrational to get himself fired . . . at least try to calm him down so he wouldn't do anything irrational." Reid Sr. testified that he called Reid Jr., Novak, and Jolly together and said, "Let's stop this fighting. [Coats is] worked up. He's overwrought. I think somebody ought to quiet him down." Still according to Reid Sr., he asked Jolly to go talk to Coats "to try to quiet him down so there wouldn't be this uproar, but I never made a threat . . . I asked [Jolly] to go and talk to Hoskins so she would get the background of the machine shop for the last 5 years so she would understand the past history, what has been going on, so if any grievances came up and they were frivolous grievances, before she accepted them, I told her to go talk to Mr. Hoskins." Reid Sr. testified that he told Jolly about receiving a report from Foreman Crnko that Coats had said he was going to file a grievance once a week,[9] but

[7] This inference is based partly on the nature of Coats' grievance, and partly on Novak's testimony that this clause had not been mentioned in connection with the prior disputes about lathe operators' doing machinists' work and was brought up in September 1981 intraunion discussions regarding Coats' May 5 grievance.

[8] In the past, Respondent had on occasion promoted lathe operators to machinists.

My finding that this apprentice proposal was made is based on Jolly's and Hoskins' testimony. To the extent inconsistent with their testimony, I do not accept Reid Jr.'s testimony that "anything short of full machinist class for everybody [was] unacceptable" to the Union. Hoskins testified that he did not think the lathe operators would accept anything less than Jolly's apprentice proposal.

[9] Crnko did not corroborate Reid Sr.'s testimony that Crnko made this report, and Reid Sr.'s testimony is the only evidence that Coats ever made such a statement.

Reid Sr. testified to the belief that the Coats grievance which had just been discussed at the meeting was not frivolous. Reid Jr. who according to his father and Novak was present during at least part of this conversation, did not testify about it. For reasons stated *infra*, I accept Jolly's version.

6. Allegedly unlawful statements by secretary-treasurer Reid Jr.

Two days later, on June 4, Jolly went to Reid Jr.'s office to discuss "problems within the Company." During this discussion, Reid Jr. said that the reason he had personally laid off Coats rather than having Crnko do it was that Crnko "would blow it . . . [Crnko] would have told [Coats] that he was laid off due to his grievances." Jolly asked how Coats was doing. Reid Jr. said that the foreman of the foundry night shift, to which Coats had recently been transferred, had said "he was doing a great job. He wished he had other people like him."

Jolly testified that Reid Jr. went on to say that "he felt with [Coats'] attitude he wasn't going to last too long." Reid Jr. testified that he said "that I sensed in meetings at the time when I talked to [Coats], the time when we had to give him a layoff, and subsequent to that at a later time during the grievance meetings that I was in with her that I was concerned that [Coats] had displayed a very hostile attitude. He was very embittered by this issue that he was very worked up in . . . I asked her if she would talk to him and try to get him to calm down so that we could deal with these matters calmly." Reid Jr. testified that he had never noticed an attitude problem in Coats, who had been working for Respondent since about March 1979, until the problem with the lathe operators and the machinists came up, and that Reid Jr. had never heard any complaints about Coats' "overall work." Wilma Trower, who performs sales work for Respondent, testified that as Jolly and Reid Jr. were leaving his office following a June 4 meeting between them in his office with the door open, Trower overheard him calmly ask Jolly, while they were in the main reception area, "to please talk to John [Coats] to try to calm him down in his outlook, his attitude, before he became so wrought that he might do something that might hurt himself." Jolly denied that any part of her June 4 conversation with Reid Jr. occurred in the main reception area. Reid Jr. testified that on that date, Jolly and he "did sit down and talk." He did not testify about whether he said anything to her that day in the main reception area. For reasons stated *infra*, I accept the testimony of Jolly summarized in this paragraph.

7. Status of Coats' May 5 grievance

Novak testified that except for Coats' May 5, 1981, grievance there were no significant differences between any of the grievances filed over the years regarding the machinist/lathe operator issue. He also testified that on an unspecified date or dates, at least sometimes with Respondent's encouragement, he had told Coats and Jolly that such prior decisions were final and binding, but that these employees had never been willing to accept them. Novak further testified that Coats' May 5, 1981, grievance was "entirely different from" the other machinist/lathe operator grievances because it had brought into play the contract provision regarding temporary and part-time transfers to a higher labor grade and "by me not knowing the difference between the two jobs how could I ever make a decision without evaluating or putting in a form"; as previously noted, during the June 2 discussion of this grievance, Novak had disagreed with Coats' interpretation of this clause and agreed with the Reids' interpretation.

On an undisclosed date, Respondent complied with its undertaking, during this conference, to submit a proposal defining the relationship between machinists' and lathe operators' work. The machine shop rejected this proposal. On August 24, 1981, Novak met with the Union's regional director regarding Coats' May 5 grievance. Novak testified before me at the September 8, 1981, hearing that he and the union regional director were trying to set up a meeting between the International and MIRA regarding that grievance.[10]

D. *Analysis and Conclusions*

1. Reasons for credibility findings

The General Counsel's case depends to a substantial extent on the largely disputed testimony of Janet Jolly. Respondent's brief concedes that all of the meetings with management about which she testified did in fact take place. However, Respondent contends that much of her testimony as to what management said during these meetings should be discredited because, *inter alia*, statements significantly different from her testimony were made by her during an interview conducted by company secretary-treasurer Reid Jr. (who represented Respondent at the hearing) in preparation for the hearing.[11] During this interview with Reid Jr., Jolly made statements inconsistent with her hearing testimony regarding Foreman Crnko's remarks; more specifically, she replied "No" when asked whether Crnko ever threatened to transfer anyone to another department because a grievance was filed, and when asked whether it was ever threatened to her that the machine shop would be closed because grievances were filed. Also, during this interview she made statements at least arguably inconsistent (and believed by her to be inconsistent) with much of her hearing testimony regarding the Reids; more specifi-

[10] Novak testified that "up until this moment," Respondent had been unaware of this activity.

[11] Before asking Jolly questions about her conversations with company representatives, Reid Jr. told her that the interview was being conducted to prepare for the hearing of the case, that the interview was voluntary, that employees would not be penalized or promoted because they agreed to answer any questions, and that she might feel free not to answer any questions and to return to her job. Further, she answered "No" when Reid Jr. asked her whether she had any fear of "reprisal" by Respondent if she answered or did not answer any questions (although she testified before me that she was unsure what the word "reprisal" means), and answered "Yes" when he asked her whether she was willing to answer questions and understood it was strictly voluntary. Reid Jr. also advised her that the interview was being tape recorded. The interview was conducted in the presence of steward Hoskins. Of other employees also interviewed by Reid Jr. in preparation for hearing, one declined to have anything taped, and his interview was not taped.

cally, she said "No" when Reid Jr. asked her if anyone had ever asked her to discourage any employees from filing grievances, and if Reid Jr. had ever threatened "to fire any employee because they filed grievances."

I credit Jolly's hearing testimony under oath notwithstanding her inconsistent unsworn statements when being interviewed by Reid Jr. Jolly's testimony at the September 8 hearing was consistent with her pretrial affidavits, to which she swore on June 17 and 24 (3 or 4 weeks after Coats filed his charge), a month before the complaint issued, and about 6 weeks before she was interviewed by Reid Jr. Jolly has a daughter to support, and she testified that she was afraid for her job if she told Reid Jr. the truth.[12] Further, she testified before me that "it was perjury if I lied today. It was nothing if I lied on the tape . . . I don't commit perjury. I've got one daughter."

Moreover, Jolly's testimony is partly corroborated by the testimony of other witnesses, including witnesses called by Respondent, and by testimony which stands uncontradicted. Thus, Jolly's testimony regarding her and Coats' conversation with Crnko, when he threatened to shut down the machine shop if the grievances continued, is directly corroborated by Coats; and these employees' testimony about this conversation, and her testimony about her private conversation with Crnko when he threatened that Coats would be transferred if he continued to file grievances, are indirectly corroborated by the undisputed testimony that Reid Jr. later told her that Crnko would have told Coats he was being laid off because of his grievance. Reid Sr. corroborated her testimony that on June 2 he told her to present grievances to Hoskins before filing them with Respondent. Reid Sr., Novak, and Hoskins, all of them called by Respondent, all corroborated her testimony that during this same conversation Reid Sr. asked her to talk to Coats about his "attitude"; and Novak and Hoskins (like Jolly) both testified, in effect, that Reid Sr. also questioned whether Coats would continue to work for Respondent (although Novak, Hoskins, and Jolly each gave a different version of what Reid Sr. said). Further, Reid Jr. did not testify about this June 2 conversation (although his father and Novak testified that Reid Jr. was present during at least part of it, and Reid Jr.'s post-hearing brief states that Reid Jr. was present), and did not corroborate sales employee Trower's testimony (contradicted by Jolly) that part of the June 4 conversation between Jolly and Reid Jr. took place in the reception area.[13] Also, although Foreman Crnko denied ever telling anyone that the machine shop would close or that he would be transferred to the foundry if he did not stop writing grievances, Crnko was not asked to describe what was said during the meetings when he allegedly made these remarks (or even whether such meetings took place, although Respondent's brief concedes that they did). Nor is Crnko's truthfulness as a witness established by the fact that he would lose his own job as machine shop foreman if the machine shop shut down. The shutdown threats which the employee witnesses attributed to him are perfectly consistent with his having been bluffing, or with a desire to keep his own job by forestalling the shutdown of the machine shop.

Moreover, the demeanor of Jolly and Coats impressed me favorably; and Jolly has never had anything to gain financially by giving her sworn statements and testimony against her employer.[14] After observing them on the stand, I do not accept Respondent's contention that they testified untruthfully because they resented Respondent's refusal to give them machinist's pay rather than the lathe operator's pay they were then receiving.

2. Whether the statements found to have been made violated the Act

I agree with the General Counsel that Respondent violated Section 8(a)(1) of the Act when Crnko, admittedly a supervisor, told employee Jolly that if Coats continued to file grievances, he was going to be transferred to the foundry (where the work is hot, dusty, and dangerous) from the machine shop; and told employees Jolly and Coats that if the grievances did not stop, "we would shut down the machine shop. Although Crnko has no power to transfer employees or to decide whether or not to close down the machine shop, he has been Respondent's machine shop foreman for 29 years, reports only to the Reids (who are seldom in the machine shop), hired Coats and Jolly, gives them their work assignments, issues any reprimands they would receive, and would be the individual who would recommend them for promotions or wage increases. Accordingly, employees would reasonably believe that in making such threats, Crnko was reflecting the thinking of the Reids.[15] Nor were Crnko's threats rendered lawful by Coats' active prosecution of his May 5 grievance during the June 2 conference, following which Crnko's superiors again threatened reprisals for Coats' grievance activity. *Russell Stover Candies* v. *N.L.R.B.*, 551 F.2d 204, 207–208 (8th Cir. 1977); *J. P. Stevens & Co., Inc.*, 244 NLRB 407, 408, fn. 8 (1979).

[12] She testified without contradiction that, during her June 4 meeting with Reid Jr., he told her that the reason he and not Anthony Crnko had laid off John Coats was that "Tony would blow it . . . Tony would have told John that he was laid off due to his grievances." (Coats' charge alleged that about May 26, he had been laid off because he filed a grievance; but the complaint does not so allege.) She also testified without contradiction that in the course of her pretrial examination by Reid Jr., in late July, he told union steward Hoskins that if Reid Jr. really wanted to get rid of someone, he could.

[13] I note, moreover, that portions of Trower's testimony about what Reid Jr. allegedly told Jolly in the reception area ("try to calm [Coats] down in his outlook, his attitude, before he became so wrought that he might do something that would hurt himself") bear some resemblance to Jolly's testimony about what Reid Jr. said to her in the office ("he felt with [Coats'] attitude he wasn't going to last too long"). Further, the contents of Reid's alleged reception-area remarks as testified to by Trower are in no way inconsistent with the contents of his remarks in his own office as testified to by Jolly.

[14] As to Coats, this was true at the hearing but not while his charge was being investigated. Respondent's brief states that his charge sought one day's pay.

[15] Thus, Jolly testified during her examination by Reid Jr. that although she knew Crnko did not have the power to shut down the department and was unsure whether he had the power to transfer employees, she knew that he had access to the Reids, and that she took Crnko's statements seriously because "it wasn't like 'I will do it.' The impact that I took out of it was that 'We'll or 'They'll do it,' which meant it would include you three."

Also, I agree with the General Counsel that Respondent further violated Section 8(a)(1) when, on June 4, secretary-treasurer Reid Jr., during a discussion of the machinist/lathe operator problem partly involved in Coats' grievance, told employee Jolly that although Coats was a good worker, Reid "felt with [Coats'] attitude he wasn't going to last too long." Particularly in view of Reid Jr.'s testimony that Coats had always been a good worker and had never had an "attitude problem" until the machinist/lathe operator problem came up, I find that Reid Jr. was thereby threatening that Coats would be discharged if he continued to file and press grievances regarding that problem, at least.

Further, I agree with the General Counsel that Respondent violated Section 8(a)(1) when, following a disputatious and inconclusive company-union grievance conference during which grievant Coats and President Reid had an angry argument about the meaning of a contract clause that Coats (and thereafter the Union) heavily relied on, President Reid asked Jolly to discuss Coats' "attitude with him because he was making it hard on himself." I conclude that Reid was thereby threatening to effect reprisals against Coats if he continued to file and press grievances. See *Ryder Truck Lines, Inc.*, 239 NLRB 1009 (1978).[16] Finally, I agree with the General Counsel that in the circumstances of this case, Respondent further violated Section 8(a)(1) when President Reid asked Jolly to present grievances to steward Hoskins before filing them with Respondent. The bargaining agreement on its face called for an employee to give filled-out grievance forms directly to Respondent, and permitted him to give the remaining copies to a union committeeperson rather than to the steward, after oral discussion with the employee's immediate supervisor had failed to resolve the dispute. Moreover, steward Hoskins testified that an employee's use of such procedures was not a violation of a union directive, but was simply different from past practice.[17] Accordingly, union committeeperson Jolly had a statutory right to file grievances with Respondent without first presenting them to Hoskins. *Pacific Coast Utilities Service*, 238 NLRB 599, 606-607 (1978), enfd. 638 F.2d 73 (9th Cir. 1980). Furthermore, I infer that President Reid's statement to Jolly about Hoskins was motivated by the same desire to preserve the existing machinist/lathe operator situation against attack through the grievance procedure as was Respondent's unlawful conduct in threatening reprisals against Coats if he continued thus to attack that situation. In so inferring, I rely particularly on Hoskins' action in dropping Coats' April 1981 grievance on the ground that an allegedly like grievance had been denied in June 1980; on the fact that complaints which employees submitted to Hoskins alone were very seldom submitted to Respondent in the written form which was contractually required for Hoskins' union superiors to assume a role in grievance processing; and on the fact that during the conference which immediately preceded Reid Sr.'s remarks, business representative Novak (Hoskins' superior in the union hierarchy) had evinced an intention to further pursue Coats' May 1981 written grievance regarding the machinist/lathe operator situation. Accordingly, Reid Sr.'s statement to Jolly constituted an effort to enlist her aid in Respondent's efforts to coerce Coats into halting his grievance activity and, therefore, constituted a further violation of Section 8(a)(1). See *Lyman Steel Co.*, 249 NLRB 296, 299-300 (1980).

[16] Cf. *Joseph T. Ryerson & Sons, Inc.*, 199 NLRB 461 (1972) (members Fanning and Howard Jenkins, Jr., dissenting), cited by Respondent, where the employer's remarks were made during a general discussion of frivolous grievances which was not related to any particular grievances, and the employer had already responded favorably to one of the two grievances which had previously been talked about. Reid Sr. testified that he did not regard as frivolous the Coats grievance which had been discussed at the June 2 meeting.

[17] Accordingly, I need not and do not consider the respective rights of employee grievants, employees who are union representatives, and employers where such employees are acting consistently with a written contractual grievance procedure and union officials (with employer acquiescence) have purported to require them to act otherwise.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has violated Section 8(a)(1) of the Act by threatening to effect reprisals against employee Coats if he continued to file grievances, and by attempting to enlist the aid of another employee in Respondent's efforts to coerce Coats.
4. Such unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom, and from like or related conduct, and to post appropriate notices.

Upon the foregoing findings of fact and conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[18]

The Respondent, Midwest Alloys, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with transfer, departmental shutdown, discharge, or other reprisals for filing grievances through their collective-bargaining representative.

(b) Seeking to enlist the aid of other employees in an effort by Respondent to coerce employees into refraining from filing grievances.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

[18] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Post at its O'Fallon, Missouri, facility copies of the attached notice marked "Appendix.."[19] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[19] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present their evidence and state their positions, it has been decided that we violated the law in certain ways. We have been ordered to post this notice.

WE WILL NOT threaten you with transfer, departmental shutdown, discharge, or other reprisals for filing grievances through the union which represents you.

WE WILL NOT try to enlist your aid in trying to coerce other employees into refraining from filing grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under the Act.

MIDWEST ALLOYS, INC.